

**PT 01-46**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**FACETS  
MULTIMEDIA,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**Nos. 99-PT-0051  
(98-16-1027)  
P.I.N: 14-32-101-003**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Messrs. William J. Seitz and James Regan of Fisk, Kart, Katz & Regan on behalf of Facets Multimedia, Inc.

**SYNOPSIS:** This matter raises the following issues: (1) whether Facets Multimedia, Inc., (hereinafter the “applicant”) qualifies as an “institution of public charity” within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the “Code), and, (2) whether real estate identified by Cook County Parcel Index Number 14-32-101-003 (hereinafter the “subject property”) was “actually and exclusively used for charitable or beneficent purposes,” as required by Section 15-65 of the Code during the 1998 assessment year. The underlying controversy arises as follows:

Applicant filed an Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on February 5, 1999. The Board reviewed

applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. On November 12, 1999, the Department issued a determination finding that the subject property was not in exempt ownership and not in exempt use. Applicant filed a timely appeal as to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at hearing, I recommend that the Department's determination in this matter be reversed.

**FINDINGS OF FACT:**

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2, 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 3.
3. The subject property is located at 1517 W. Fullerton, Chicago, IL and improved with an 18,000 square foot building. Dept. Ex. No. 2.
4. The building is divided into two floors and a basement. The basement contains video and audio-visual libraries, workshop space and storage space. The first, or main floor, contains two lobbies, classroom and workshop space and restrooms. The second, or upper floor, contains a combined classroom/conference room, administrative offices and programming space.<sup>1</sup>

Applicant Ex. No. 3; Tr. pp. 245, 253-255.

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1. For a complete floor plan, *see*, Applicant Ex. No. 3.

B. Applicant's Organizational Structure and Operations

5. Applicant is an Illinois not for profit corporation organized for purposes of promoting the film and cinema arts. Applicant Ex. Nos. 5, 6.
6. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service on July 24, 1978. This exemption remained in full force and effect throughout the 1998 assessment year. Applicant Ex. No. 9.
7. Applicant is also exempt from Illinois Use and related sales taxes pursuant to a determination originally issued by the Department on March 19, 1993. This determination, which was based on the Department's conclusion that applicant qualified for such exemption under Section 3-5(3) of the Use Tax Act (35 **ILCS** 105/1, *et seq*; 35 **ILCS** 105/3-5(3)),<sup>2</sup> remained in full force and effect throughout the 1998 assessment year. Applicant Ex. No. 8.
8. Applicant's operations for the 1998 assessment year centered<sup>3</sup> around a series of programs that promoted public interest in, and sought to advance the study of, film and cinema-related arts. These programs consisted of:
  - A. The Chicago International Children's Film Festival;
  - B. A media arts camp for children;

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2. Section 3-5(3) of the Use Tax Act provides, in substance, that tangible personal property purchased by a not for profit music or dramatic arts organization [that is exempt from federal income tax] under Section 501(c)(3) of the Internal Revenue Code and that is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis, is exempt from Illinois Use Tax. 35 **ILCS** 105/3-5(3). Administrative Notice.

3. The programs described in this and all subsequent Findings of Fact shall be understood to be 1998 programs unless context clearly specifies otherwise.

- C. Workshops that trained and encouraged children to analyze media-related issues in critical terms;
- D. Media literacy programs for teachers in the Chicago Public and other school systems;
- E. Adult education programs;
- F. Maintaining two libraries that contain many historically noteworthy films, academically significant documentaries and other cinema-related resources;
- G. Distributing the resources of these libraries through both paid and free video rentals, sales of resource materials and/or giveaways to individuals or organizations in need;
- H. Maintaining a database that enabled applicant to provide resources and free admissions to over 4,000 individuals, cultural groups, ethnic organizations and educational institutions.<sup>4</sup>

Applicant Ex. Nos. 34, 35, 36, 37, 38, 39, 40, 40A, 42, 46; Tr. pp. 229-232, 280.

- 9. The Chicago International Children's Film Festival (hereinafter the "Festival") ran from October 15, 1998 through October 25, 1998 and featured screenings of children's films and videos for schools and other groups, as well as media education programs for children. Applicant Ex. Nos. 23, 29, 34, 36.
- 10. Applicant extended approximately 2,400 free invitations for Festival events to various individuals and groups. It also allowed over 20,000 children from

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4. These groups and institutions include, *inter alia*, the Asian American Institute, the Holocaust Memorial Foundation and Marquette University. For an exhaustive listing of the persons, institutions and organizations included within this database, *see*, Applicant Ex. No. 46.

various public school systems to attend Festival events for free. Applicant Ex. No. 31; Tr. pp. 211-212, 215-216.

11. Applicant presented awards for films and videos that are screened at the Festival. Some of these awards were presented by a children's jury that received training at applicant's media arts camp. Applicant Ex. Nos. 23, 25;
12. The media arts camp, which ran from June 22 through June 26, provided 150 children, who were selected solely on the basis of their interest in media affairs and writing skills, with instructional workshops in video making techniques, film evaluation and other media-related skills. Applicant Ex. Nos. 25, 41; Tr. pp. 217-218.
13. Applicant actively solicited recommendations from principals of schools located in disadvantaged neighborhoods that enabled children from these schools to participate in the media arts camp and other related workshops. It also provided subsidies that allowed over 70% of the children who attended the media arts camp to partake at no charge. Tr. pp. 103, 208-210, 286.
14. Applicant designed its media literacy programs for teachers at the request of the Illinois State Board of Education. These programs, which enabled teachers in the Chicago Public School system to earn continuing education credits, focused on ways in which social studies and language arts teachers could teach their students to think critically about media influences. Applicant Ex. Nos. 40, 40A; Tr. pp. 29-31 37-51, 57-58, 110.

15. Applicant's adult education programs consisted of a series of retrospectives, seminars and/or workshops that focused on specific cultural or technical aspects of the film arts. Applicant Ex. Nos. 18, 20.
16. Representative topics for the adult education programs included "An Introduction to Film Art," "Contemporary Filmmakers on the Cutting Edge," "American Comedy: Slapstick and Sophistication" and "The French New Wave, Cinema of the Balkans." Applicant Ex. No. 20.
17. Students enrolled in the film and video arts curriculum at Columbia College of Chicago could receive course credits for taking and completing any of applicant's adult education courses they took. Tr. pp. 72-82.
18. Applicant's film libraries contain over 45,000 films, videos and digital video disks. Nearly all of these resources are older films that have high critical reputations or represent some significant contribution to the film arts. Many come from foreign countries; some are quite rare. Applicant Ex. Nos. 58A, 59A, 60A, 61A; Tr. pp. 131-136, 184, 186-189, 200, 283.
19. Applicant distributes the resources of its libraries by renting, selling and giving away films to various educational institutions, film scholars, civic groups and individuals. Tr. pp. 75, 134-135.
20. Over 1,000 educational, governmental, religious and philanthropic institutions received resources from applicant's libraries. They included *inter alia*: (a) DePaul, Texas Tech, Northwestern, Bradley, Brigham Young and Harvard Universities; (b) the United States Army and Air Force Academies; (c) High schools throughout the United States; (d) Amnesty International, the Veteran's

Administration, the Milwaukee Arts Museum, the Carnegie-Mellon Foundation and the National Geographic Society, (e) Temple Judah of Cedar Rapids, IA and Sacred Heart Major Seminary.<sup>5</sup> Applicant Ex. Nos. 47, 50; Tr. pp. 192, 198.

21. Applicant charged rental fees for use of its videos. It did, however, make some 400 children's videos available without rental charges, regularly waived rental fees for those who were unable to pay, and donated videos to children's hospitals and youth programs. Applicant Ex. Nos. 44, 45, 48; Tr. pp. 192-194, 214, 227.

22. Applicant also maintained a free video resource library, through which it made approximately 800 to 1,000 of the films and other materials developed for the Festival available to the public at no charge. Applicant Ex. No. 32; Tr. pp. 213-214.

#### C. Applicant's Financial Structure

23. Applicant's sources of revenue for the period January 1, 1998 through December 31, 1998 were as follows:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Contributions, Public Support, Government Grants, Etc. <sup>6</sup>	\$ 343,583.00	5%
Video Sales	\$5,476,065.00	84%
Video Rentals	\$ 216,665.00	3%
Memberships	\$ 255,660.00	4%
<b>SOURCE (CONT'D.)</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Box Office, Special Screenings and Concessions	\$ 198,937.00	3%
Interest Income	\$ 37,987.00	1%

5. For an exhaustive recitation of institutions, *see*, Applicant Ex. No. 47.

6. For a complete lists of contributors and grantors, *see*, Applicant Ex. Nos. 15, 16.

Other Unspecified Income	\$ 20,154.00	<1%
<b>TOTAL REVENUES</b>	<b>\$6,549,051.00</b>	<b>100%</b>

Applicant Ex. No. 10.

24. Applicant's expenses and net loss for the same period were as follows:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
<b>Program Services:</b>		
Purchased & Produced Videos For Sale	\$2,761,836.00	44%
Purchased Video Rentals	\$ 38,821.00	1%
Other Program Service Expenses	\$2,825,527.00	45%
Total Program Service Expenses	\$5,626,184.00	91%
Management & General	\$ 585,342.00	9%
<b>TOTAL EXPENSES</b>	<b>\$6,211,526.00</b>	<b>100%</b>
<b>RECONCILIATION:</b>		
Total Revenues	\$6,549,051.00	
Total Expenses	\$6,211,526.00	
<b>Net Income</b>	<b>\$ 337,525.00</b>	

*Id.*

25. The above financial statements do not account for the value of, or the expenses associated, with:

- A. The 3,422 free admissions which applicant provided to various groups and individuals throughout 1998;<sup>7</sup>
- B. The 250 to 300 videos that applicant provided free of charge to various individuals and organizations;

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7. All of the financial information described above shall be understood as pertaining to the 1998 assessment year unless context clearly specifies otherwise.



- C. The nearly 6,000 videos which applicant allowed to be rented free of charge;
- D. The 350 videos which applicant made available to the public without any rental charge;
- E. In-kind contributions, valued at \$49,600.00, which applicant received to support its programs;
- F. In-kind donations, valued at \$59,350.00, which helped to defray the expenses applicant incurred for its various programs;
- G. Subsidies, that ranged from \$54.20 to \$1,245.00 per person, which enabled underprivileged children and others in financial need to participate in applicant's programs at reduced or no cost;
- H. The value of services that applicant received from the approximately 350 volunteers that worked on behalf of its organization.

Applicant Ex. Nos. 11, 12, 14, 44, 45, 48; Tr. pp. 192-194, 220, 227-232, 248, 274-276, 278-279, 291, 300-301.

D. Applicant's Ownership and Use of the Subject Property

- 26. Applicant obtained ownership of the subject property by means of a warranty deed dated March 4, 1977. Applicant Ex. No. 2.
- 27. The subject property, which is improved with an 18,000 square foot building, houses applicant's video libraries and administrative offices, as well as two video theaters, conference rooms, workshop space and classrooms. Applicant Ex. No. 3; Tr. pp. 253-255.

28. Applicant used all of the building areas as venues for conducting and/or administering all of its various programs, including *inter alia*, the Festival, the media arts camp for children, the adult education programs, and the operations of its libraries, during 1998. *Id.*

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1998 real estate taxes under Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1, *et. seq.* Accordingly, under the reasoning given below, the determination by the Department that said property does not qualify for such exemption should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by “institutions of public charity” is exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65(a). The statutory requirements for this exemption are, for present purposes, that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for

charitable purposes.” *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

This record establishes that applicant uses the subject property for no purpose other than conducting activities that allow it to fulfill its organizational purposes, which are to promote public interest in and advance the study of film and the cinema-related arts. The record further proves, via the warranty deed admitted as Applicant Ex. No 2, that applicant owned the subject property throughout the tax year currently in question. Accordingly, the true source of controversy herein is whether applicant qualifies as an "institution of public charity."

By definition, charitable institutions operate to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They also: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus

on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1<sup>st</sup> Dist. 2000)).

In Randolph Street Gallery, the court held that “integrating art and art education into the spectrum of community activities ... is charity.” *Id.* at 1068. The same may be said of this applicant’s aggressive outreach efforts to introduce and integrate cinema, the film arts and critical analysis of media-related issues into the greater Chicagoland community.

Many of these outreach efforts provided substantial numbers of children from economically disadvantaged neighborhoods with opportunities to learn critical viewing and media production skills free of charge. Others allowed applicant to make its considerable resources available to over 4,000 individuals, cultural groups, ethnic organizations and educational institutions.

Applicant also made some 400 children’s videos available without rental charges, regularly waived rental fees for those who were unable to pay and donated videos to children’s hospitals and youth programs. It additionally maintained a video resource library, wherein it made approximately 800 to 1,000 films and other materials developed for the Chicago International Children’s Film festival available to the public at no charge. These and all of applicant’s other outreach programs mirror those held to be indicative of

“charitable” status in Randolph Street Gallery. Therefore, pursuant to Randolph Street Gallery, I recommend that the Department’s initial determination in this matter be reversed.

That determination appears to have been based on the Department’s conclusion that applicant’s financial structure was inconsistent with that of an “institution of public charity” because applicant derived the overwhelming majority of its revenues from rental fees and sales income. However, funding sources are not the sole determinant factor of exempt status. American College of Surgeons v. Korzen, 36 Ill.2d 336, 340 (1967). More importantly, evidence adduced at hearing clearly indicated that the financial statements (Applicant Ex. No. 10) did not account for the value of the in-kind donations, whether of goods or volunteer services, which applicant received to support its programs. (*See*, Applicant Ex. Nos. 11, 12, 14, 44, 45, 48; Tr. pp. 192-194, 220, 227-232, 248, 274-276, 278-279, 291, 300-301).

The financial statements further did not make any allowance for the subsidies which applicant provided so that underprivileged children could participate in its instructional programs at little or no cost. (*Id.*) Nor did they account for the value of the numerous resources that applicant supplied free of charge, whether by fee waiver or outright donation. (*Id.*).

In light of the above considerations, it is apparent that the financial statements, in and of themselves, do not accurately reflect the true nature and scope of applicant’s extensive outreach programs. Accordingly, the information contained therein ought not be afforded decisive impact on the question of whether this applicant qualifies for exempt status. It should, however, be placed in its proper analytic environment.

That setting focuses on whether the rental fees and sales income, which comprise applicant's major sources of revenue, constitute barriers to receipt of applicant's services or resources. It is well established that imposing service fees or other financial obligations does not, *ipso facto*, defeat exempt status so long as applicant accommodates those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 518 (1975); Randolph Street Gallery, *supra*. Applicant's executive director, Milos Stehlik, repeatedly testified that applicant maintains a regular and consistent practice of granting free admissions and/or fee waivers to those who would not otherwise be able to afford use of its resources. (Tr. pp. 207, 212, 220,225, 231-232, 247, 278). Mr. Stehlik further testified that applicant routinely mails out coupons which enable civic groups, local college students, high schools and others to obtain videos, attend screenings and participate in other programs of interest without charge. (Tr. pp. 205-206, 227-230, 237, 278).

This testimony is consistent with the voluminous documentary evidence, discussed above, which establishes the nature and breadth of applicant's aggressive public outreach programs. Such programs clearly demonstrate that applicant operates primarily in the public interest and does not impose any barriers to the receipt of its services or resources. Therefore, the Department's initial determination in this matter should be reversed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 14-32-101-003 be exempt from 1998 real estate taxes under Sections 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

July 30, 2001

Date

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Alan I. Marcus  
Administrative Law Judge